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# United States Senate

COMMITTEE ON BANKING, HOUSING, AND  
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

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July 24, 2018

The Honorable Joseph M. Otting  
Comptroller of the Currency  
400 Seventh Street SW  
Washington, D.C. 20219

Dear Comptroller Otting:

We write to express concerns with actions recently taken by the Office of the Comptroller of the Currency (OCC) to weaken bank accountability under the Community Reinvestment Act (CRA). With the publication of OCC Bulletin 2018-17 (the Bulletin),<sup>1</sup> the agency has undermined fair lending compliance among the national banks it regulates. Moreover, the OCC's unilateral process for implementing such changes – without agreement from other CRA regulators and without the notice and comment afforded under the Administrative Procedure Act (APA) – is troubling.

With regard to the Bulletin, we have two primary concerns.

- A. Performance Evaluation and Timing:** the Bulletin altered the CRA exam cycle for the largest banks supervised by the OCC, lengthening from 36 to 48 months the frequency with which such exams occur for banks operating in more than 30 rating areas in the United States. The Bulletin also changed the way in which the exam cycle is calculated – now counting the date on a calendar basis instead of on the basis of when the previous exam was completed. We are concerned that the net impact of this change may be to lengthen the exam cycle for some large banks. When exams schedules are attenuated, problematic practices may be overlooked if they occur in early years of the cycle.

We agree that CRA performance evaluations often take too long and can leave banks with dated ratings and the public with inadequate information about a bank's current performance in meeting the needs of its community. However, we believe a more sensible policy change would have adopted the calendar basis counting system, but maintained or shortened the 36 month exam cycle rather than lengthening it to 48 months. In fact, the OCC's large bank cycle is already on relatively long compared to that of the Board of Governors of the Federal Reserve System (Fed) and the Federal Deposit Insurance Corporation (FDIC).<sup>2</sup>

<sup>1</sup> Office of the Comptroller of the Currency. "Description: Supervisory Policy and Process for Community Reinvestment Act Performance Evaluations." June 15, 2018. Available at: <https://www.occ.gov/news-issuances/bulletins/2018/bulletin-2018-17.html>

<sup>2</sup> U.S. Department of the Treasury. "Community Reinvestment Act – Findings and Recommendations." Memorandum for the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit

**B. Fair Lending Investigations:** the Bulletin also provided that the OCC will publish final CRA exams if a fair lending investigation conducted by the Consumer Financial Protection Bureau (CFPB), other regulators, or a law enforcement agency will take more than 90 days to resolve. This is in contrast to the current practice, which holds CRA exams open until such investigations are concluded.

The Bulletin likewise states that any illegal practices uncovered as a result of the investigation, but released subsequent to the CRA exam, will be considered in the next exam cycle. We believe a preferable policy would allow the application of retroactive downgrades, which would apply immediate consequences for illegal behavior rather than push penalties years into the future.<sup>3</sup>

This change is all the more troubling when viewed in conjunction with changes made during the tenure of Acting Comptroller Noreika. For example, banks with non-satisfactory CRA ratings have, in the past, been blocked from branching, merging or converting charters. Under changes made in November 2017, banks are now permitted to receive a waiver from those restrictions if certain business actions would “help the bank to achieve its CRA objectives.”<sup>4</sup> In a separate October 2017 policy change, the OCC provided more opportunities for banks to take “corrective actions” before penalties for poor performance are assessed, and also narrowed the instances in past compliance deficiencies or illegal credit practices would impact a bank’s CRA rating.<sup>5</sup>

In total, by publishing CRA exam results while fair lending investigations are open, moving away from a system of retroactive downgrades, and minimizing the consequences for past harmful practices, the OCC has stripped away some of CRA’s most effective enforcement mechanisms.

Please answer the following questions about the changes in the Bulletin described above:

1. What was the length of the CRA exam cycle for each large bank with more than 30 rating areas supervised by the OCC over each bank’s last three exam cycles? Please also provide an average exam cycle length for this cohort of banks over the last three exam cycles. Why does the OCC believe that 48 months is the appropriate exam cycle length for these large banks?
2. What is the rationale for the change regarding fair lending investigations? Did the OCC consider the application of retroactive downgrades? If so, why was that change rejected?

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Insurance Corporation, April 3, 2018. Available at: <https://home.treasury.gov/sites/default/files/2018-04/4-3-18%20CRA%20memo.pdf> (see page 17).

<sup>3</sup> See, for example, BancorpSouth Bank. “Community Reinvestment Act Performance Evaluation.” Federal Deposit Insurance Corporation, Division of Depositor and Consumer Protection, Dallas Region – Memphis Area Office, October 1, 2013. Available at: [https://www5.fdic.gov/CRAPES/2013/11813\\_131001.PDF](https://www5.fdic.gov/CRAPES/2013/11813_131001.PDF)

<sup>4</sup> Office of the Comptroller of the Currency. “Impact of CRA Ratings on Licensing Applications.” November 8, 2017. Available at: <https://occ.gov/publications/publications-by-type/other-publications-reports/ppms/ppm-6300-2.pdf>

<sup>5</sup> Office of the Comptroller of the Currency. “Impact of Evidence of Discriminatory or Other Illegal Credit Practices on Community Reinvestment Act Ratings.” October 12, 2017. Available at: <https://www.occ.gov/publications/publications-by-type/other-publications-reports/ppms/ppm-5000-43.pdf>

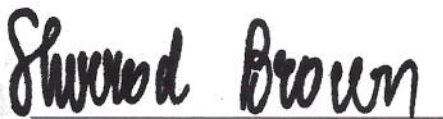
3. Please provide us with any studies, analyses or memorandums that served as the basis for the OCC's decision. Please provide us with any additional information regarding the OCC's consultation with the Fed or the FDIC regarding these changes.
4. Please provide us with information regarding why these changes were adopted via a Bulletin rather than through the APA rulemaking process.

Our concerns are heightened given your recent comments at Senate Banking, Housing & Urban Affairs Committee and House Financial Services Committee hearings.<sup>6</sup> By equivocating on whether discrimination even exists, and stating that you would move forward on a proposal even in the absence of support from the Civil Rights community, we fear that you are moving in the wrong direction with regard to CRA.<sup>7</sup>

We are also concerned about the substance of, and process underlying, these changes to the CRA. To that end, we ask that you rescind the recently-published Bulletin. We believe that any modifications to the CRA, including those made in the Bulletin, be made on an interagency basis with the Fed and the FDIC, and be afforded the benefit of public input under the APA. The Civil Rights community – who fought hard for decades to dismantle legal systems of lending and housing discrimination – also deserves the chance to comment on changes to this important law.

In order for us to conduct proper oversight of OCC activity, please respond to the questions by August 3, 2018. We look forward to your response.

Sincerely,



SHERROD BROWN  
U.S. Senator



JACK REED  
U.S. Senator



ROBERT MENENDEZ  
U.S. Senator



MARK WARNER  
U.S. Senator

<sup>6</sup> See Senate Committee on Banking, Housing & Urban Affairs. "Update from the Comptroller of the Currency." Thursday, June 14, 2018. Available at: <https://www.banking.senate.gov/hearings/update-from-the-comptroller-of-the-currency>; and House Committee on Financial Services. "Financial Industry Regulation: the Office of the Comptroller of the Currency." June 13, 2018. Available at: <https://financialservices.house.gov/calendar/?EventTypeID=309&Congress=115>

<sup>7</sup> *Id*



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